



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **AMENDED MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

HCA SPRING BRANCH MEDICAL CENTER  
C/O HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE STE 1288  
HOUSTON TX 77098-3926

**Carrier's Austin Representative Box**  
#01

#### **MFDR Date Received**

MARCH 25, 2004

#### **Respondent Name**

LIBERTY MUTUAL FIRE INSURANCE

#### **MFDR Tracking Number**

M4-04-7903-02 (formerly M4-04-7903-01)

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Taken From The Table of Disputed Services:** "Per stop-loss threshold as total charges exceeds \$40K. Calculation of stop-loss reimbursement is \$108,741.35 (total billed) x SLRF (75%) = \$81,556.01 total allowable."

**Amount in Dispute:** \$34,258.75

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated April 26, 2004:** "We base our payments on the Texas Fee Guidelines and the Texas Workers' Compensation Commission Acts and Rules...The bill and documentation attached to the medical dispute has been re-reviewed and our position remains the same...**Upon conducting a line by line audit, it was determined that the charges for implants appeared to be excessive at \$41,129.77. The total charge for implants was deducted from the total billed charges. The implants were then re-priced at usual and customary, per the geographical area and added back to the remainder of charges...The remainder of charges were paid per TX FS stop loss at 75% of billed charges. Then a 10% ppo reduction was taken. Interest added in the amount of : 132.26. Total payment made per TX FS less the ppo discount: \$47,297.26...**Liberty Mutual does not believe Vista Medical Center Hospital is due any further reimbursement..."

**Response Submitted by:** Liberty Mutual Insurance Group

**Respondent's Supplemental Position Summary Dated February 12, 2013:** "Based on the performed procedure, as well as the length of stay, the Requestor has invoked the Stop-Loss Exception contained within the former Acute Care Inpatient Hospital Fee Guidelines and sought reimbursement for facility fees for dates-of-service August 31 through September 4, 2007. The Requestor now seeks additional reimbursement in the amount of \$34,258.75. At the outset, Liberty would point out that the Provider failed to obtain the requisite preauthorization through concurrent review for dates-of-service March 31 through April 8, 2003. Per former 28 TEX. ADMIN. CODE 146.600(i)(1), inpatient length of stay is one of the types of health care that requires concurrent review for an extension. Liberty pre-authorized only the first two days; the remaining ten days of the claimant's stay were not preauthorized. As the Provider did not obtain approval of the treatment prior to its delivery, Liberty has no liability for its payment...Further, Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-Loss Exception ...a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded \$40,000...Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any

rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor..."

**Response Submitted by:** Hanna & Plaut LLP

### ***SUMMARY OF FINDINGS***

| Disputed Dates                             | Disputed Services           | Amount In Dispute | Amount Due |
|--|-----------------------------|-------------------|------------|
| March 27, 2003<br>through<br>April 8, 2003 | Inpatient Hospital Services | \$34,258.75       | \$0.00     |

### ***FINDINGS AND DECISION***

This **amended** findings and decision supersedes all previous decisions rendered in this medical payment dispute involving the above requestor and respondent.

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.600, 27 *Texas Register* 12359, January 1, 2003, requires preauthorization for inpatient hospital services.
3. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
  - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 *Texas Register* 5319, 5220 (July 4, 2008).
  - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 *Texas Register* 6264, 6306 (July 4, 1997).
4. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:

#### Explanation of Benefits

- F – Z695 – THE CHARGES FOR THIS HOSPITALIZATION HAVE BEEN REDUCED BASED ON THE FEE SCHEDULE ALLOWANCE. (Z695)
- C – Z557 – THIS CONTRACTED HOSPITAL HAS AGREED TO REDUCE THIS CHARGE BELOW FEE SCHEDULE OR USUAL AND CUSTOMARY CHARGES FOR YOUR BUSINESS. (Z557)
- F – Z560 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE OR USUAL AND CUSTOMARY VALUES AS ESTABLISHED BY INGENIX. (Z560)
- C – PA – FIRST HEALTH NETWORK
- A – X170 – PRE-AUTHORIZATION WAS REQUIRED, BUT NOT REQUESTED FOR THIS SERVICE PER TWCC RULE 134.600. (X170)
- U – X009 – DIETARY SUPPLEMENTS ARE NOT REIMBURSABLE UNLESS A SPECIFIC DIETARY DEFICIENCY RESULTED FROM AN INDUSTRIAL INJURY OR ILLNESS. (X009)

- D – X801 – THIS ITEM WAS PREVIOUSLY SUBMITTED AND REVIEWED WITH NOTIFICATION OF DECISION ISSUED TO PAYOR/PROVIDER (DUPLICATE INVOICE). (X801)

## Issues

1. Does a preauthorization issue exist in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

## Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for dates of service March 30, 2003 through April 8, 2003 based upon lack of preauthorization.

The respondent states in the position summary that "the Provider failed to obtain the requisite preauthorization through concurrent review for dates-of-service March 31 through April 8, 2003. Per former 28 TEX. ADMIN. CODE 146.600(i)(1), inpatient length of stay is one of the types of health care that requires concurrent review for an extension. Liberty pre-authorized only the first two days; the remaining ten days of the claimant's stay were not preauthorized."

28 Texas Administrative Code §134.600(i)(1) states "The health care requiring concurrent review for an extension for previously approved services includes: inpatient length of stay."

The requestor did not submit documentation to support that preauthorization was obtained for dates of service March 30, 2003 through April 8, 2003; therefore, a preauthorization issue does exist in this dispute.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$108,741.35. The division concludes that the total audited charges exceed \$40,000.
3. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).

4. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
5. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
  - (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
  - (ii) the hospital's usual and customary charges; and
  - (iii) reimbursement as set out in section (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "THIS CONTRACTED HOSPITAL HAS AGREED TO REDUCE THIS CHARGE BELOW FEE SCHEDULE OR USUAL AND CUSTOMARY CHARGES FOR YOUR BUSINESS." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Liberty Mutual Fire Insurance and HCA Spring Branch Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal \$108,741.35.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." Review of the submitted documentation finds that the length of stay for this admission was twelve days; however, documentation supports that the Carrier pre-authorized a length of stay of two days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is one surgical day at \$1,118.00 and one ICU/CCU day at \$1,560.00 for a total of \$2,678.00 for the two authorized days.
- 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$41,129.77.
- The Division finds the total allowable for the implants billed under revenue code 278 is:

| Description of Implant per Itemized Statement | QTY. | Cost Per Unit | Cost + 10%  |
|---|------|---------------|-------------|
| Depuy Acromed Spinal                          | 1    | \$17,972.60   | \$19,769.86 |

- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$837.54/unit for Inf Albumin 5% and \$418.77/unit for Albuminar 35% 50ML. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in \$2,678.00 + \$19,769.86 for a total of \$22,447.86.

Reimbursement for the services in dispute is therefore determined by the lesser of:

| <b>§134.401(b)(2)(A)</b> | <b>Finding</b> |
|--------------------------|----------------|
| (i)                      | Not Applicable |
| (ii)                     | \$108,741.35   |
| (iii)                    | \$22,447.86    |

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$47,297.26. Based upon the documentation submitted, no additional reimbursement can be recommended.

### **Conclusion**

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
05/22/2013  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party.***

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**